IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1568 of 1987

with

SPECIAL CIVIL APPLICATION No 5149 of 1989 and

SPECIAL CIVIL APPLICATION NO.5171 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes

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2. To be referred to the Reporter or not? yes

3. Whether Their Lordships wish to see the fair copy of the judgement?

No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge?

No

MANGAL PARK CO-OPERATIVE HOUSING SOCIETY

Versus

STATE OF GUJ

Appearance:

1. Special Civil Application No. 1568 of 1987

MS VASUBEN P SHAH for Petitioner

2. Special Civil ApplicationNo 1374 of 1986

MR SH SANJANWALA for Petitioner
M/S PURNANAND & CO for Respondent No. 1

3. Special Civil Application No. 5171 of 1991

Mr. S.B.Vakil for the petitioner
Mr. S.N.Shelat,Addl.AG with Kamal Mehta AGP for the respondent no.1.
Mrs. K.A.Mehta for respondent no.2.
Mr. S.H.Sanjanwalla for respondent no.7.
Ms. K.J.Brahmbhatt for respondent no.9.

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT
Date of decision: February 27 ,1997.

JUDGEMENT(Per:Pandit.J)

SCA No. 1568/87 and SCA 5149/89, are filed under article 226 of the Constitution of India to quash and set aside the acquisition proceedings taken by the State Gujarat for the purpose of acquiring land for L & T Ltd. a public company incorporated under the provisions of the Companies Act 1956 . Said company is respondent no.4 and 3 respectively in these two petitions. But SCA No.5171/91 is filed by M/s L & T to challenge the order of withdrawing from the acquisition passed by the State of Gujarat under section 48 of the Land Acquisition Act (hereinafter referred to as the Act) in respect of the lands covered by SCA No. 1568/87 and SCA No. 5149/89, and two other lands. Thus all these 3 petitions are inter connected and the final fate of each petition is also dependent on the final fate of the controversy between the parties. Therefore, in the circumstances, it would be appropriate proper and just to decide and dispose of all these three proceedings by common judgment and therefore, we will proceed to decide them by this common judgment.

2. In SCA No. 1568/87 and SCA No.5149/89 the petitioners are challenging the acquisition proceedings taken by the State of Gujarat for acquiring the land for M/s L & T. It is the claim of the petitioner in SCA No. 1568/87 that the petitioner is a Co.op. society registered under the Gujarat Co.Op.Societies Act , the petitioner had purchased the land bearing revenue survey no. 40 admeasuring 5 acres and 19 gunthas of village Magdhalla taluka Chorasi, and it is the further contention of the petitioner that the petitioner society

is formed for the public purpose for providing houses to the members belonging to middle strata of the society. Therefore, when the petitioner society is established for achieiving a public purpose acquisition of their land is not at all justified.

3. The petitioner in SCA No. 1563/87 further contends that there is no publication of the Notification u/s. 4 in the local daily. It is further contended that there were 2 Notifications u/s 4 and in the said notification the order for acquisition was shown as 1 Are and 11 sq.mtrs. and 20 Aras and 40 sq.mtrs; whereas in the notification u/s , 6 the total area is shown as 2 hectors and 1 ara and 11 sq.mtrs. Thus the notification u/s 4 and section 6 are not consistent and they are showing inconsistent area. It is the further contention of the petitioner that the acquisition in question is acquisition for a company and consequently acquisition proceedings could be put into force to acquire the land only if the company executes and agreement mentioning on section 41A of the Act. But in the instant case, no such agreement was executed u/s 41A before the issuance of notifications of sections 4 and 6. There is no compliance of Rule 4 of the Companies land acquisition Rules. Therefore, in the circumstances, acquisition is not bonafide and it is by way of fraud and colourable exercise of powers by the State Government. Hence the petitioner seeks to quash the said acquisition proceedings.

4. The claim of the petitioner in SCA No. 1568/87 is resisted by the State Government by filing counter affidavit. It is contended that the petitioner society had constructed 33 flats in the land of 500 sq. mtrs. The location of the said flats clearly indicates that the society is not meant for residential purposes. Though NA permission was granted in the year 1981 no construction is made. This clearly indicates that the the investment is for speculative purposes. There is proper publication of the Notification u/s 4 as well as u/s 6 . Thus it is contended that the acquisition is for public purpose and is valid and legal as per the provisions of the Land Acquisition Act.

5. L & T has also contested the claim of the petitioner. It is stated in the affidavit filed by the manager of the said company that survey no. 40 of village Magdhalla is bifurcated by a canal running from north to south and consequently the two notifications u/ss 4 and 6 are issued. It is further contended that

the petitioner society is of members of rich persons and the members are having big houses in Surat city. Therefore, in the circumstances it could not be said that the petitioner society is established for the public purpose . It is further contended that there is proper following of Rule 4 as well as provisions of the said Act. There is also proper publication of the award in the local daily. The petition is liable to be dismissed on account of delay and laches. It is further contended that the petition be dismissed.

6. In SCA No. 5149/89 the petitioners claimed that they are owners of land bearing survey no. 41/2 of village Magdhalla. They contend that the original owners of land was one Chenabhai Limbabhai Patel and he expired on 29.3.85. Petitioner no.1 is a widow and petitioners nos 2 and 4 are his sons. They contend that no notice u/s 5A of the Act was served on any of them and they are not also heard u/s 5A . They contend that there is no proper publication of the notifications u/ss. 4 and 6. They also contend that there is no proper compliance of the provisions of Rule 4 and Section 41 for acquiring the land in question for the company i.e. L & T. They further contend that they are in possession of the land and false record has been created to show that the possession of the land has been taken and handed over to L&T. They therefore, seek for quashing of the said acquisition proceedings.

7. The claim of the petitioners is resisted by both the Government and L&T. They have denied the claim of the petitioners that there was no proper publication of the notifications u/ss 4 and 6 of the Act. They have further contended that u/s 9 noticesa were issed on 1.4.87 and award has been passed on 19.12.88. They also denied the claim of the petitioners that they are in possession of the land in question and contend that as a matter of fact the possession of the land was taken from the petitioner and the same was given to the said company on 5.7.89. It is further contended that the petitioners petition is also hit by delay and laches and the same deserves to be dismissed.

8. SCA No. 5171/91 : The petitioner L & T is challenging the action of Government of Gujarat u/s 48(1) of the Act as regards survey nos. 39,40,41 and 41/2 and 44/2 of village Magdhalla. It is contended that the action of the State Government of withdrawing of those lands from the compulsory acquisition is malafide and in colourable exercise of powers with a view to favour the persons interested in the said land. It is contended

that said order of withdrawal is passed without giving opportunity of being heard to the petitioner. It is contended that withdrawal from acquisition of the said land could not take place without the consent of the petitioners and without giving any opportunity to the petitioner of being heard. It is further contended that as regards the land of survey ono.41/2 the possession of the land was taken from the family members of Chanabhai Limbabhai on 5.7.89 under a Panchnama and thereafter possession of the same was handed over to the petitioner. Therefore, in the circumstances, there could not be withdrawal from the acquisition of the said land. It is further contended that mere passing of the order of withdrawal would not suffice. and therefore said withdrawal is not withdrawal in the eye of law and consequently said order of withdrawal is nullity. Thus it is contended that the order passed by the respondent no.1 vis. Government of Gujarat in withdrawn u/s 48A of the Act from the acquisition of those lands of survey nos. 39,90,41/2 and 44/2 be quashed and set aside.

9. Respondent no.1 had contested the claim of the petitioner by contending that the decision taken by the Government is bonafide and the same is taken into consideration of the circumstances and overall situation. It is contended that by the official notification u/ss 4 and 6 of L.A. Act, 10 Hectors, 89 Aras and 87 sq.mtrs. of land was to be acquired for the petitioner by the notification issued u/s 48 but only 3 hectors 43 aras and 59 sq.mtrs. of land has been released and even after the realisation of the said land, the petitioner will have the land admeasuring 7 hectors 46 aras and 28 sq.mtrs of land. If the requirements and the needs of the petitioner are taken into consideration then it would be quite clear that the petitioner will be left more than its need. In the year 1988,1989,1990,1991 and 1992 the petitioner was having respectively 154, 217, 376,399 and 482 employees working on its project. If this position is taken into consideration then the action of the respondent no.1 could not be said to be illegal and invalid. It is further contended that the petitioner has no locus standi to file such a petition and the same should be rejected. It is also contended that the claim of the petitioner that the petitioner was given possession of the land is not correct.

10. Respondent no.3, 7,8,9 and 11 have also contested the claim of the petitioner by filing their affidavit in reply. It is contended by them that present petition is not tenable in law and that the petitioner has no locus standi to challenge the action of the State Government

and no hardship is caused to the petitioner by the action of the action of the Government. They contended that at the most the petitioner can lay a claim for damages u/s 48(2) of the Act. Government under its power of eminent discretion can drop the proceedings for acquisition of the land. By such action of the Government there is no infringement of any legal or fundamental rights of the petitioner. It is further contended that the claim of the petitioner that he got possession of land of survey no. 41/2 on 5.7.89 is false. The petitioner had joined hands with the Government employees and only documents showing delivery of possession are created. Thus there is only paper possession and petitioner never got actual possession of the land in question. Thus it is contended that petitioners right to challenge the order of the Government u/s 48 and to quash the said order be dismissed with costs.

SCA 1568/87

11. It is the contention of the petitioner in SCA no 1568/87 that the petitioner society is a co.op.housing society and the land in question was purchased by the petitioner society for housing purposes; that the petitioner society was going to fulfil public purpose and therefore it was not justified to deprive the petitioner of the said land by recoursing to the provisions of the said Act and handing over the same to a company. In considering the question regarding validity of acquisition the court has to consider only that question as to whether the acquisition is for the public purpose or not. There is no question as to whether the holder of the land was making the use of the land for the public purpose or not. There is no provision of any law which says that if the land owner or holder of the land is making use of the said land amounting to use for a public purpose the said land could not be subject matter of the land acquisition.

12. In the case of New Rivera Co.op.H.Society vs. Special Land Acquisition Officer 1996(1) SCC 731, the land which was the subject matter of acquisition was held by a co.operative housing society. In that case, the contention which is raised before us was also raised and it was further urged that on account of the said acquisition the members of the appellant co-operative housing society would become shelterless and it was also urged before the Apex Court that at least the Government be directed to provide for alternative site. Said contention has been negatived by the Apex Court by laying

down the following principles.

" Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a large public purpose. Far from saying that he will be rendered shelterless the Supreme Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for public purpose is rendered shelterless. If that contention is given credence, no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against him wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person."

In the same case, it has been also laid down that the State is not obliged to provide alternative site. In the case of Balmukand Khatri EWD and INS Trust vs. State of Punjab 1996(4) SCC 212, the appellant was an Institute had claimed exemption in the acquisition on the ground that they intend to establish public school and since the other land was available to the Government, the Government should leave the land but that claim was not accepted by the Apex Court. Therefore, in view of the above cited cases, the claim of the petitioner that as the petitioner is a housing society and as the object of the petitioner is to achieve a public purpose its land could not be acquired, is not tenable.

13. Ms. V.P.Shah L.A. for the petitioner fairly conceded before ius that in view of the material on record, she is not pressing her contention that there was no proper publication of Rules 4 and 6 and that she was giving up this contention.

14. Her further contention is that there is no proper compliance of section 41 of the L.A.Act. From the material on record, it would be quite clear that the agreement had taken place between the acquiring and i.e. the L & T and the State Government as contemplated by section 41 on 17.1.86. The notification under section 4 was issued on 23.1.86; whereas the Notification under section 6 was issued on 10.2.87. Therefore, in view of

these dates which are also mentioned by the petitioner in his affidavit in reply filed in SCA No. 5171/96 in para 3, the claim of the petitioner that there is no proper compliance with the provisions of section 41 is not tenable. No doubt the agreement which has been entered into between the acquiring body and the State Government has been published in Government Gazette on 24.1.86 but publication of the said agreement is not to be considered for the purpose of section 41. Under section 41, it is necessary to have an agreement as contemplated by the said section prior to the publication of the Notification under sections 4 and 6. No doubt section 42 of the said Act makes it compulsory for publication of such an agreement in the official Gazette but said section 42 also does say that said publication in the official Gazette must be prior to issuance of Notifications under sections 4 and 6.

15. The main contention of Ms.Shah is that there is no proper compliance with the provisions of Rules 3 and 4 which are governing acquisition for the company. Said Rules 3 and 4 are running as under:

"3. (1) Land Acquisition Committee. (1) For the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act. the appropriate Government shall by Notification in the Official Gazette, constitute a Committee to be called the Land Acquisition Committee.

(2) The Committee shall consist of-

(i) the Secretaries to the Government of the Department of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the appropriate Government may appoint.

(ii) such other members as the appropriate Government may appoint, for such terms as that Government may, by order, specify, and

(iii) the Secretary to the Department or any officer nominated by him dealing with the purposes for which the company proposes to acquire the land.

(3) The appropriate Government shall appoint one of the members of the Committee as its Chairman.

(4) The Committee shall regulate its own procedure.

(5) It shall be the duty of the committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act on which it is consulted and to tender its advice within one month from the date on which it is consulted:

Provided that the appropriate Government may on a request being made in this behalf by the Committee and for sufficient reasons extend the said period to a further period not exceeding two months.

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings:- (1) Whenever a company makes an application to the Appropriate Government for acquisition of any land that Government shall direct the Collector to submit a report to it on the following matters, namely:

(i) that the company has has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiating with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose ;

(iv) that the area of the land proposed to be acquired is not excessive.

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agriculture land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company reasonable opportunity to make any representation in this behalf, hold an inquiry into the matters referred to in sub rule (1) and

while holding such inquiry he shall-

(i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the direct whether or not such land is good agriculture land;

(ii) determine, having regard to the provisions of Secs. 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price)not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation:

For the purpose of this rule "good agriculture land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average productivity and includes a garden or grove land.

(3) As soon as may be after holding the inquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the appropriate Government under sec.6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, f any submitted under sec.5-A of the Act; and

(ii) the agreement under Sec. 41 of the Act has been executed by the company."

16. Now from the material on record it is not possible to hold that there is compliance of the Rules 3 and 4. If the affidavit filed by the State Government as well as by the company is taken into consideration, then it would be clear that there is nothing to show that a

Committee as contemplated by Rule 3 was in fact ccnstituted by the State Government. The Division Bench of this court in the case of Zaverchand Popatlal Sumeria & ors. vs. State of Gujarat & ors. 1995(2) GLR 1733 has held that provisio to Rules 3 and 4 are mandatory and non compliance with the said proviso makes the acquisition proceedings illegal. We do not find any reason to take a different view and in our considered opinion, the principles laid down in the said case are laying down the correct position of law. Therefore, in the circumstances, we hold that the acquisition in question is vitiated for non compliance of Rules 3 and 4. No doubt, Mr. S.B.Vakil, L.A. for L & T has contended before us that the petitioners' petition is liable to be dismissed on the ground of delay and laches. He has cited before us the cases of State of Tamil Nadu vs. L.Krishna 1990(1) SCC 250 and The Ramjas Foundation & ors. AIR 1993 SC 852 in support of his contention that on account of delay the petition is liable to be dismissed. But in the instant case, the Notification under section 4 was issued on 23.1.86. Notification u/s 6 was issued on 10.2.87 and the present petition was filed in the month of March1987. Now if all these dates are taken into consideration, it is not possible to hold that there is a case of delay on the part of the petitioner.

17. Therefore, in view of the above discussion the acquisition in question is liable to be set aside only on the ground that there is no compliance of Rules 3 and 4 governing the acquisition of the land for companies framed under the Land Acquisition Act.

SCA No. 5149/89

18. As regards the petitioner's claim for challenging the acquisition in question, it is contended by the respondent that the petition is liable to be dismissed atleast on the ground of delay and laches.Mr. S.B.Vakil learned advocate. for the acquiring body L & T has cited before us the cases of State of Tamil Nadu and The Ramjas Foundation (Supra). In the case of State of Tamil Nadu (Supra), the declaration was issued in the year 1975. No objection was raised by the petitioner in an inquiry under section 5A and the petition challenging the Notification was filed in the year 1982-83 and in case of Ramjas Foundation, petition was filed in 1978 for challenging the notification of 1957. Therefore in those circumstances the Apex Court held that the petitions are liable to be dismissed on the ground laches. Now in the

instant case, it is the case of the petitioner that the land in question was standing in the name of Chenabhai Limbabhai and said Chenabhai Limbabhai had expired on 29.3.85 and the petitioners are widow and heirs of said Chenabhai Limbabhai. They have further averred that no notice was served on them either in their names or in the name of Chenabhai Limbabhai under section 5A , No doubt from the materials on record it is quite clear that there was publication of the Notifications under sections 4 and 6 in the Official Gazette but there is nothing on record to show that as a matter of fact notices u/ss. 4,6 and 9 were issued and served in the name of late Chenabhai Limbabhai. There is no material on record to reject the claim of the petitioners that they were not served with the notices. It is the contention of the petitioners that they came to know about the Notification in question when the acquiring nobody was trying to take possession of their land. As a matter of fact it is the contention of the respondents that the acquiring body - L & T that the possession of the land was taken on 5.7.89. Therefore, in the above stated circumstances filing of the petition by the petitioner on 19.7.89 could not be said to be liable to be dismissed on the ground of delay and laches.

19. Now there is a contention of the respondent acquiring body that the possession of the land in question has been taken on 5.7.89 and the acquiring body also put in possession of the said land. As against this it is the contention of the petitioner that no actual possession of the land in question was taken . The petitioners have filed the affidavit of Panchas whose signatures are appearing on the panchnama prepared for showing that possession of the land was taken and in those affidavits they have clearly stated that they were called for panchnama in the office of the Panchayat of Magdhalla and their signatures were taken on blank papers and they had not gone to the site and neither the landlord was present nor the actual possession was delivered to the acquiring body. If the panchnama which is produced on record is read, then it would be quite clear that in the panchanama it has been mentioned that panchas were called in the Panchayat office of Magdhalla. The panchnama no where states that from the office of the Panchayat the panchas and revenue officers had gone on the land and there possession of the land was taken and possession of the land was handed over to the acquiring body. The panchnama which is prepared for showing that possession is delivered to the company-giving the name of one M.H.Adikari but no affidavit of the said person has been filed to show that he had actually taken possession

by going on the land on that day. No doubt the respondent-acquiring body has produced extract from the record of rights to show that the name of the company had been entered in the relevant column and the assessment of the land for that year is also paid by the respondent. But the entry in the 7/12 extract(extract of record of right) in the Kabjedar Column is made on the strength of the panchnama prepared to show that possession was taken and possession was delivered on 5.7.89. There is nothing on record to show that the entry in Record of Rights was made after notice to the petitioner. But in view of the contents of the panchnama and affidavit of the panchas to the panchnama and the affidavit of the petitioner, said panchnama which is only a document to show that possession of the land was taken could not be believed and accepted. It is an admitted fact that as regards the other lands of the acquiring body, they have prepared a barbed wire fencing for the same. No affidavit of any independent person is coming forth to support the claim of the acquiring body that possession was taken from the land owner and that the petitioners lost their possession. Learned advocate for the acquiring body Mr. S.B.Vakil has cited before ius the case of Balmukund Khatri vs State of Punjab 1996(4) SCC 212 put reliance upon the following head notes.

"It is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the [[beneficiaries if the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

Merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law."

Before considering the the above authority cited by Mr. Vakil, we would also like to refer to an earlier decision of the Apex Court in the case of Balwant Narayan Bhagde vs. M.D. Bhagwat AIR 1975 SC 1767 wherein the following principles are laid down.

"When the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act 1894, it must take actual possession of the land since all interest in the the land are sought to be acquired by it. There

> can be no question of taking ' symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is taking of actual possession of the land."

Now if both these decisions of the Supreme Court are read together then it would be clear that in order to show that the possession of the land (which is acquired) is taken , it must be shown that actual possession of the land is taken. A mere preparation of paper for showing possession would not be sufficient. In the instant case, if the panchnamas prepared in this case are read carefully then they would show that the panchas were called in the Panchayat office and there the documents were prepared and signed. The panchnama no where mentions that the panchas had actually gone on the land in question and that by moving in the land in question actual possession was taken and then subsequently it was actually delivered to the acquiring body. There is also nothing on record to show that there is Commission of any act of taking possession by the acquiring body either at the time of taking possession or subsequent to taking possession. There is no iota of evidence to hold that the owner of the land had actually and physically lost possession of the land at any time. Therefore, it could not be said that they had subsequently taken possession of the land and retained the same. Therefore, in the circumstances we are unable to hold that the petitioners had lost possession of the land on 5.7.89.

20. The contention in this petition that there is no valid publication of the Notifications under sections 4 and 6 could not be accepted in view of the material on record.

21. It is the claim of the respondents that the award for the land has been passed on 27.1.89. But there is nothing on record to show that any of the petitioners were served under section 9 of the Land Acquisition Act. Therefore, the passing of the award without serving notice u/s 9 would be bad and consequently said award will not be binding on them.

22. Now in this case also the claim of the petitioners as regards non compliance of Rules 3 and 4 will have to be accepted in view of material on record. There is nothing on record to show that compliance of Rules 3 and 4 which are held to be mandatory in the case

of Zaverchand Popatlal Sumeria & ors. vs. State of Gujarat & ors.vs 1995(2) GLR 1733. Therefore, acquisition in question would be bad only on account of non compliance of the provisions of Rules 3 and 4.

SCA No.5171/91

23. This petition is filed by L & T to challenge the order of the Government of Gujarat passed under section 48(1) of the Land Acquisition Act 1894. The main contention of the petitioner is that said order has been passed without hearing him and therefore, the same is bad. It is its contention that as the petitioner was the acquiring body it was an "interested person" and therefore, it ought to have been heard before taking the decision of withdrawing from the acquisition. Before going to consider this contention of the petitioner, it is necessary to see the provisions of section 48. Section 48 of the Act is running as under:

"48. Completion of acquisition not compulsory compensation to be awarded when not completed (1) Except in the case provided for in Sec. 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section. "

If the above provisions of section 48 are taken into consideration then it would be quite clear that there is no necessity of hearing either the owner of the land or the person interested before taking the decision to withdraw from the acquisition. If the provisions of sub section 2 of section 48 are considered then it would be quite clear that whenever Government withdraws from any

acquisition the Collector has to determine the amount of compensation due for the damage suffered by the owner in consequence of any notice/notification or any notice or any proceedings under the Act and it further lays down that such determined amount is to be distributed amongst the person interested. Therefore, if the said sub section 2 of section 48 is considered then it would be quite clear that even the owner of the land is not to be heard before passing the order of withdrawing from the acquisition. The persons interested are also contemplated as the persons who are entitled to receive the amount of compensation due to damages suffered by the owner of the land. In the case of Spl. Land Acquisition Officer vs. Godrej Boyce AIR 1987 SC 2421, the Supreme Court has considered the question of exercising the powers under section 48 by the State for withdrawal from acquisition and has laid down as under:

" The State can be permitted to exercise its power of withdrawal under S. 48 unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provision."

24. Learned advocate for the petitioner has cited before us the case of Gujarat Housing Board vs. Nagajibhai Laxmanbhai & ors. 1985(2) G.L.R. 1190 In this decision given by the Full Bench of this court, it has been held as under:

"Held that the declaration in Himalaya Tiles and Marble (P) Ltd. Francis Victor Coutinho (AIR 1980 SC 1118) holds the field and that the petitioner herein is an interested party whose presence is necessary to effectually and completely decide the issue in question. If the Court in its discretion feels that the petitioner is an interested party and his presence is necessary to effectually and completely adjudicate and settle all questions involved in the suit, it has ample power to add the petitioner as party-defendant in the suit. In the present case, the impugned land acquisition is for the publici purpose of the Gujarat Housing Board,and is being acquired at the cost of the Gujarat Housing Board. The entire amount of compensation is to come out of the funds of Gujarat Housing Board, who is the petitioner herein. Even the cost of the present litigation irrespective of its result is to be borne by the Gujarat Housing Board. I In fact all the stake

in the result of the litigation and the cost of the litigation is on the Gujarat Housing Board and as such it can be easily presumed that the Gujarat Housing Board is an interested party in this litigation. The suit can be effectually and completely decided only in the presence of the petitioner herein. Even if it is considered that the petitioner is not a necessary party, there cannot be any two opinion in view of the Supreme Court's decision rendered in Himalaya Tiles' case, that the petitioner is a proper partyto be added as the party-defendant to the suit.

Held that the person for whose benefit the land is acquired is an interested party, and has every right to be added as a party defendant to the suit in order to effectually and completely decide the dispute in issue. "

But the facts of the said case are quite different than the case before us. In that case, the suit was filed by the owner of the land to challenge the notification issued under sections 4 and 6. The land in question was being acquired for the Gujarat Housing Board. Said acquiring body had filed an application under order I Rule 10 to join the acquiring body as one of the defendants and that claim has been upheld by the Full Bench of this Court. That claim has been upheld by the Full Bench of this Court on the basis that the persons interested means all the persons who had directly or indirectly interested in the title to the land or quantum of compensation as they are deemed to be persons interested . By reading sections 58 and 18 together, it will be clear that in a proceeding under section 18, the acquiring body becomes a proper and necessary party as it is interested in the payment of quantum of compensation for acquisition of the land and therefore, presence of the said acquiring body under section 18 becomes necessary because ultimately whatever compensation the land owner is held to be entitled is to go from the pocket of the acquiring body. Therefore, said decision is not of any help. In the earlier decision of the Division Bench of this court in the case of Dariapur Patel Co.op. Housing Society vs. State of Gujarat 1988(2) GLR 1460, it has been held as under:

"The statutory provision in the Land Acquisition Act clearly vests the power with the Government, who is the dominant owner to drop the acquisition proceedings and the decision taken by it cannot be questioned. There so no vested

right or any legal right for the acquiring body or for the owner of the land to compel the Government to acquire certain land under the land acquisition proceedings. In the frame work of Sec. 48 of the Land Acquisition Act 1894, there is no substance in the argument that the principles of natural justice have not been followed in this case."

Mr. Vakil in support of his contention has cited before the case of Kikabhai Kuabhai Patel vs. State of Gujarat 1990(2) G.L.R. 1043 but that is a case under section 78 of the Bombay Provincial Municipal Corporations Act and in that case the municipal corporation had moved the State Government for acquiring a piece of land for their drainage disposal scheme. Said proposal was accepted and thereafter notifications under sections 4 and 6 were issued and it has been held by the Division Bench of this Court that before taking the decision of withdrawal , the State Government ought to have called upon the corporation to suggest another piece of land before passing the order of withdrawal and issuing the gazette Notification and said observations were also made while coming to the conclusion that there was actually no withdrawal in that case. But the said decision no where lays down specifically that without hearing the acquiring body the State has no authority to pass the order of withdrawal. Mr. Vakil also cited before us the case of Union of India vs. Sher Singh and ors. 1993(1) SCC 608 . In that case the land was acquired by the State Government for national Security Guard as desired by the Union of India. The land owner had made a reference under section 18 and in the said reference an application was moved by the Union of India for being impleaded as respondent on the ground that its interest would be adversely affected in case of enhancement of rate of compensation and it would also be deprived of opportunity to file appeal in case of its non implementation. That claim was rejected by reference court as well as High Court and the same orders were set aside by the Supreme Court in that case and Union of India was allowed to join as a party as in that case the Union of India-the acquiring body was to pay the compensation. In the case of Himalaya Tiles and Marbles (P) Ltd., vs. Francis Victor Coutinho AIR 1980(SC) 1118, cited by Mr. S.B.Vakil the question of persons interested under the L.A.Act has been considered by the Apex Court and the following principles are laid down.

"The definition of a 'person interested' given in

> section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. Thus the definition of 'person interested' in Section 18 must be construed so as to include a body, local authority or a company for whose the land is acquired and who is bound under an agreement to pay the compensation. This view accords with the principles of equity,justice and good conscience."

Here again it must be stated that it is also a case under section 18 of the Land Acquisition Act. If the above cited cases and the provisions to section 48 are read together and considered then it would be quite clear that when there is question of payment of compensation on account of acquisition of land, persons who are either interested in the land or persons who are interested in the payment of compensation, are to be heard when there is a question of either quashing of the land acquisition proceedings or the question of awarding the compensation. Section 48 is creating an absolute right as a dominion eminent in favour of the State which proposes to acquire the land to take a unilateral decision to withdraw from the acquisition. There is no restriction of its power to withdraw from its action of acquiring the land except in a case when in pursuance of the acquisition proceedings, the owner of the land is dispossessed from the land which is the subject matter of acquisition and either the State or acquiring body has taken possession of the land. This restriction on the State of not withdrawing from the acquisition after possession is taken, is obviously on account of the owner of the land losing the possession and after the acquiring body has got the possession and has proceeded further to achieve its purpose of acquisition. Therefore, we are unable to hold that the petitioner ought to have been heard by the State before passing an order of withdrawing from the acquisition.

25. In the petition the petitioner has not stated as to why the petitioner was to be heard and what facts the petitioner would like to bring to the notice of the State Government for its consideration before taking the decision of withdrawing from the acquisition. In the petition the petitioner has no where alleged that on account of its withdrawal from the acquisition, the petitioner is likely to suffer irreparable loss which could not be adequately compensated in terms of money. If the provisions of sub section 2 of section 48 are considered then it would be quite clear that it is open

for a person who claims that he has been affected by the action of the State of withdrawing from the acquisition can lay his claim for damages. Therefore, in the circumstances it is open for the petitioner to lay its claim or sue the State Government for damages, if any, suffered by the petitioner. It must be stated that withdrawal from the acquisition is not the total withdrawal. The total land acquired for the petitioner was 10 hectors, 89 arras and 87 sq.meters and the land released is only 3 hectors, 93 arras and 49 sq.meters. It must be also stated here that the land was proposed to be acquired for the purpose of raising residential quarters or houses for the employees of the petitioner. The petitioner has not produced any material on record to show that the land left with the petitioner is not sufficient to meet its need. Therefore, in the circumstances we are unable to hold that any prejudice is caused to the petitioner by the action of the State in withdrawing from the acquisition.

26. Mr.Vakil has also contended before u/s that withdrawing from the acquisition is illegal and invalid as there is no notification issued u/s. 48 of the Land Acquisition Act. He contended before us that unless there is notification issued under section 48 of the Land Acquisition Act, there is no proper and just grounds to withdraw from the acquisition as contemplated by section 48 of the L.A.Act. In support of that contention Mr. Vakil has cited before us the case of Roshanara Begum vs. Union of India AIR 1996 (Delhi) 206. In this decision of the Full Bench of the Delhi High Courtin which one of ius (S.D.Pandit.J) was a Member has laid down the following principles:

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"The order withdrawing from acquisition passed under S.48 has to be published in official gazette in same manner as S.4 and S.6 notification are published. S.48 by itself does not require publication of such an order in the OfficialGazette. As a matter of fact, there is no repugnancy between the provisions of Sr. 48 of the Act as read with S.21 of the General Clauses Act. The purpose of publication of notifications and declarations under SS.4 and 6 of the Act in Official Gazette are that public at large should become aware of the factum that the land so notified is to be acquired for public purpose so that the people at large should not suffer any monetary loss or any other inconveniences in entering into any deals in

> respect of such land, subject matter of compulsory acquisition. As an analogy of the purpose enshrined in notification issued under S. 4 and declaration issued under S.. 6 for their publication in Official Gazette is also, linked to the order which is made under S.48 of the Act withdrawing from such acquisition and unless the same is also published in the manner as the original notifications, the said object could not be achieved i.e. of giving public notice to the public at large. An order under S. 48, which amounts to withdrawal from the acquisition proceedings, must be in the same manner published in Official Gazette as notifications under S.4 and declaration under S.6 are published in the Official Gazette."

27. We will also like to mention here that this decision of the Full Bench in the case of Roshanara Begum (Supra) has been affirmed and confirmed by the Supreme Court in the case of Murari vs. Union of India 1997(1) SCC 15. It is necessary to bear in mind the facts of the said case. In that case it was the claim of the land owner that the Minister concerned had passed an order of withdrawal and the land owner was also communicated of the said decision but it was contended on behalf of the State that there was no, in fact, a decision or order of withdrawing from the acquisition and the order on which the petitioner was relying upon was also not valid and the Full Bench had taken the view that the communication sent to the petitioner concerned purporting to be an order under section 48 of the Act was invalid and the land acquisition proceedings could not be quashed on the basis of such invalid communication and that there would not be a valid withdrawal from the acquisition under sections 48 unless there is a Notification u/s. 48 of the Act.

28. Learned Additional Advocate General Mr. Shelat has urged before us that the petitioner was granted post decisional hearing and the representation made by the petitioner against the decision to withdraw from the acquisition was considered and he further submitted that after considering said representation of the petitioner i.e.the acquiring body L & T, it was found that the decision taken by the Government to withdraw from the acquisition was quite proper . In support of his submission he put reliance in the cases of Swadeshi Cotton Mill vs. Union of India AIR 1981(sc) 818 , State of UP vs.Pradhan Sangh Kshettra Samiti AIR 1995(SC) 1512

and State of UP vs. Vijaykumar Tripathi AIR 1995(SC) 1130. In AIR 1981 (SC) 818 Mr. Shelat has relied upon the following observations of the Supreme Court in para 92 (pages 844 & 845.)

"92. The further question to be considered is:
What is the effect of the non observance of this fundamental principle of fairplay ? Does the nonobservance of the audi alteram partem rule, which is in quest of justice under the rule of law, has been considered universally and most a spontaneously acceptable principle, render an administrative decision having civil consequences, void or voidable? In England, the out fall from the watershed decision R. v. Baldwin 1964 AC 40 brought with it a rush or conflicting opinion on this point. The majority of the House of Lords in Ridge vs. Baldwin held that nonobservance of this principle, had rendered the dismissal of the Chief Constable void.The rationale of the majority view of that where there is a duty to act fairly just like the duty to act reasonably, it has to be enforced as an implied statutory requirement so that failure to observe it means that the administrative act or decision was outside the statutory power, unjustified by law, and therefore, ultra vires and void(See Wade's Administrative Law, ibid page 448). In India, this court has consistently taken the view that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule, wherever it can be read as an implied requirement of law, is null and void(e.g. Maneka Gandhi's case(AIR 1978 SC 597)(ibid) and S.L.Kapoor vs. Jagmohan (AIR 1981 SC 136 (ibid), In the facts and circumstances of the instant case there has been a non compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre decisional stage. The impugned order therefore could be struck down as invalid on that score alone. But we refrain from doing so because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28,1979 committed himself to the position that under section 18-F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken over, a "full and effective hearing on all aspects touching the validity and/or correctness of the a of the order and/or action of take over"

within a reasonable time after the take over. The learned Solicitor has assured the court that such a hearing will be afforded to the appellant company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking bad a right to such hearing."

Mr. Vakil for the acquiring body has urged before us that in all the cases of AIR 1981 SC 818, AIR 1995 SC 1152 and AIR 1995 SC 1130 it has been held that post decisional hearing could be accepted only in case of urgency; otherwise the hearing must be given pre decisional. Mr. Vakil drew our attention to the observations of the Apex Court in AIR 1995 SC 1512 in para 13 on page 1530 the Apex Court has observed that the matters which are urgent even a post decisional hearing is sufficient compliance of the principles of natural justice vis. audi alteram partem. Same view is expressed by the Apex Court in AIR 1995 (SC) 1130 in para 7 of its judgment. But in the same para 7 it has been also observed that it is for the authority to decide whether in the given circumstances, an opportunity provided should be prior one or a post decisional opportunity of hearing though of course the normal view of course is prior opportunity.

29. Therefore, in the circumstances when the petitioner was given a post decisional opportunity, the petitioner ought to have produced before this court certain material to show as to how the decision in question is prejudicial to him and what material placed by him before the authority in the a post decisional hearing, has not been considered. At the cost of repetition it must be stated that in the instant case that the withdrawal of the acquisition is not of the total area of 10 hectors 83 arras and 87 sq. meters of land the area acquired for the petitioner and out of it the petitioner would be left with 7 hectors 46 arras and 28 sq.meters of land. It must be also stated here that in 1992 the total employees working with the respondent were only 482. The petitioner therefore, ought to have shown that the land which is proposed to be withdrawn from the acquisition was in reality needed by the petitioner and that on account of the withdrawing from the acquisition serious prejudice is likely to be caused to the petitioner in implementing any housing scheme for its employees but nothing of that sort has been taken place in this case.Therefore, in the circumstances even

assuming that the petitioner ought to have been heard before taking the decision we are unable to hold that any injustice is caused to the petitioner by the decision in question.

30. The petitioner has filed SCA no. 5171/91 with the prayer to stay of the operation and implementation of the orders of withdrawing from acquisition is passed by the respondent Government and the petitioner has also obtained ad interim relief not to transfer the land which has been withdrawn from the acquisition. Therefore, in view of the filing of the present petition the respondent Government was not in a position to issue necessary Notification and publish the same in the official gazette. What has been held by the Full Bench of the Delhi High Court in AIR 1996 Delhi 247 is that the withdrawal from the acquisition would be effective only on issuing the Notification under section 48 of the Land Acquisition Act. At the cost of repetition it must be stated that in that case it was claimed by the Union Government before the court that though the petitioner is claiming that there was withdrawal from the acquisition u/s 48 as he was possessing some letters, there was in fact no withdrawal from the acquisition and the order of withdrawal from acquisition would be effective only on issuing a Notification under section 48 and that contention has been accepted by the Full Bench by holding that withdrawal from the acquisition would be effective only on issuing a Notification . That view of the full Bench of the Delhi High Court has been confirmed by the Apex Court in 1996(1) SCC 15. Therefore, in view of the said position of law, the decision taken by the respondent Government would be binding and legal only on issuing necessary Notification under section 48 but from the material on record it is not possible for us to hold that said decision of the State Government is either illegal or ultravires though the same will be legally enforceble only on issuing a notification under section 48.

31. No doubt it is contended by the petitioner in this case that the lands of survey number 41/2 which is the subject matter of SCA 5149/89 was given in possession of the petitioner after taking possession from the holders of the land on 5.7.89. We have already considered this aspect in SCA No. 5149/89 and have come to the conclusion that there was in fact no actual taking of possession of the land from the holders on 5.7.89. As there is no actual taking of possession from the land holders there could not be a bar for passing an order of

withdrawing from the acquisition. We have found that the panchnama showing taking of possession is a mere paper possession and that neither the acquiring body nor the revenue officer nor the panchas had gone on the land for taking possession of the land and that there was no actual handing over possession of land to the acquiring body. Hence it could not be said that there was taking of possession and consequently the order could not be said to be illegal. Therefore, in view of the above discussion we hold that the SCA No. 5171/91 will have to rejected

32. Therefore, in view of the above discussion we hold that SCA Nos. 1568/87 and 5149/89 are allowed; whereas SCA No. 5171/91 is dismissed. But in the circumstances of the case we direct that all the parties in all the petitions to bear their respective costs. Rule in SCAs No. 1568/87 and 5149/89 are made absolute; whereas Rule in SCA no. 5171/92 is discharged. Interim relief granted in SCA No. 5171/91 stands vacated.

(N.J.Pandya.J)

(S.D.Pandit.J)